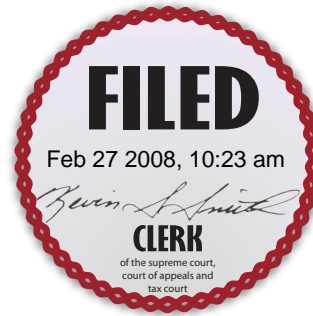


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

DALE ENGLEHARDT
Bunker Hill, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DALE ENGLEHARDT,
Appellant-Defendant,

vs.

LANA CLARK,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 38A02-0705-CV-375

APPEAL FROM THE JAY SUPERIOR COURT, SMALL CLAIMS DIVISION
The Honorable Joel D. Roberts, Judge
Cause No. 38D01-0702-SC-00047

February 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Dale Englehardt (“Englehardt”) filed a claim against Lana Clark (“Clark”)¹ in Jay Superior Court, Small Claims Division, requesting return of his tax refunds, vehicle and personal property. The small claims court concluded that Englehardt had made a valid inter vivos gift of his vehicle to Clark and that Clark was entitled to a portion of Englehardt’s tax refunds for reimbursement of Englehardt’s living expenses. However, the court determined that Clark was not entitled to Englehardt’s remaining tax refund and entered a judgment in his favor in the amount of \$350. Englehardt appeals and raises two issues, which we restate as the following three:

- I. Whether the court erred when it determined that Clark was entitled to reimbursement for Englehardt’s living expenses from his tax refunds;
- II. Whether the court erred when it determined that Englehardt gifted his vehicle to Clark; and,
- III. Whether the court erred when it determined that Clark was an involuntary bailee of Englehardt’s personal property.

Concluding that the trial court’s judgment is supported by the evidence, we affirm.

Facts and Procedural History

Englehardt and Clark began living together in December 2005. Approximately one month later, Englehardt was incarcerated in the Indiana Department of Correction. Prior to his incarceration, Englehardt executed a power of attorney in favor of Clark and gave Clark many of his personal belongings including his vehicle, 1995 Mercury Cougar.

On February 21, 2007, Englehardt filed a claim against Clark requesting the return of his personal property, vehicle, and \$1300 he received in tax refunds. A hearing was held on April 12, 2007. Englehardt appeared by telephone and Clark appeared in person.

¹ Shortly after Englehardt filed his claim, Clark married and her name is now Lana Wheeler.

Four days later, the small claims court entered a judgment in favor of Englehardt in the amount of \$350. In its judgment, the court stated in pertinent part:

The Court, . . . finds that prior to the Plaintiff's incarceration, the Plaintiff and Defendant lived together for a period of time near the end of the year 2005 and the early part of 2006. The Plaintiff, who was entitled to federal and state tax refunds for the year 2005 totaling approximately \$1300.00, made arrangements to have these tax refunds electronically deposited into Defendant's checking account. The testimony is in dispute regarding the intended use of these tax refunds. The Plaintiff contends those funds were deposited into the Defendant's account with the understanding that she would send him money from time to time. The Defendant contends these refunds were placed into Defendant's account as reimbursement for living expenses provided to the Plaintiff by the Defendant prior to the Plaintiff's incarceration. The Defendant does, however, acknowledge that she did agree to send the Plaintiff money from time to time while he was incarcerated. The Plaintiff owned a 1995 Mercury Cougar automobile prior to being incarcerated. The Plaintiff executed a power of attorney authorizing the Defendant to transfer title to this car from Plaintiff's name to the Defendant's name which she did. The testimony is in conflict regarding the purpose for doing this. The Plaintiff contends that title to the car was placed in the Defendant's name so she could register the vehicle, secure license plates and then use the vehicle to visit the Plaintiff during his period of incarceration. The Defendant contends that she already had a means of transportation to visit the Plaintiff had she chosen to do so and that the vehicle was a gift to her since the Defendant would have no need for the vehicle while he was incarcerated. . . . The Plaintiff also left some miscellaneous items of personal property with the Defendant. Not knowing what to do with these items, the Defendant boxed the Plaintiff's personal effects and placed them in the care of a third party.

Appellant's App. p. 4.

The court found that a portion of Englehardt's tax refunds were placed in Clark's account as compensation for living expenses that Clark provided to Englehardt prior to his incarceration. Therefore, the court concluded that \$950 of Englehardt's 2005 tax refunds were "either to reimburse" Clark for Englehardt's living expenses or were a gift to Clark, but the remaining \$350 should be returned to Englehardt. The court also found

that Englehardt made a valid inter vivos gift of his vehicle to Clark. Finally, the court determined that Clark was an involuntary bailee of Englehardt's personal property, "that she took reasonable steps to preserve the property on behalf of [Englehardt], and that she has no duty to retrieve this property from the third party that she entrusted with the care of this property." Id. at 5. Englehardt now appeals.²

Standard of Review

Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A) (2008). When we review claims tried by the bench without a jury, our court shall not set aside the judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A) (2008). To determine whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Counciller v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005).

We also observe that Clark failed to file an appellee's brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

² Because no transcript of the trial is available, Englehardt filed a Verified Statement of the Evidence as permitted by Indiana Appellate Rule 31. The trial court certified his statement because Clark did not propose any modification to it, but noted that Englehardt's statement does not "adequately reflect the conflicting testimony presented at trial by" Clark. Appellant's App. p. 7.

Discussion and Decision

Englehardt argues that the small claims court erred when it determined that he gifted a portion of his tax refunds and his vehicle to Clark because such determination is not supported by the evidence. He also argues that the court's determination that Clark was an involuntary bailee of his personal property is not supported by the evidence.

A valid inter vivos gift occurs when 1) the donor is competent, 2) the donor intends to make a gift, 3) the gift is completed with nothing left undone, 4) the property is delivered by the donor and accepted by the donee, and 5) the gift is immediate and absolute. Fowler v. Perry, 830 N.E.2d 97, 105 (Ind. Ct. App. 2005). "Thus, once delivery and acceptance of a gift inter vivos occurs, the gift is irrevocable and a present title vests in the donee." Id. "By contrast, a gift is conditional if it is conditioned upon the performance of some act by the donee or the occurrence of an event in the future." Id. Englehardt asserts that the evidence does not support the conclusion that "he demonstrate[d] any intention of irrevocably surrendering control over the automobile or tax refunds." Br. of Appellant at 8.

First, we note that the small claims court did not conclude that the tax refunds were solely a gift to Clark. The court determined that \$950 of Englehardt's state and federal tax refunds were "either to reimburse" Clark for Englehardt's living expenses or were a gift to Clark. Appellant's App. p. 5. In support of its conclusion, the court noted that Englehardt made arrangements to have his tax refunds electronically deposited into Clark's account. Clark testified that Englehardt did so to reimburse her for living expenses she provided to Englehardt. This evidence supports the small claims court's

conclusion that the tax refunds were given to Clark to reimburse her for Englehardt's living expenses. Moreover, in his brief, Englehardt does not challenge the trial court's conclusion that the tax refunds were given to Clark as reimbursement for living expenses.

Next, with regard to the vehicle, the trial court noted that Englehardt authorized Clark to transfer title to the vehicle to herself, which she did. Clark testified that the vehicle was a gift to her because Englehardt had no need for the vehicle during his incarceration. Englehardt's argument that he merely intended to allow Clark to use the vehicle to visit him while he was incarcerated is simply an invitation to reweigh the evidence and credibility of the witnesses, which our court will not do. See Coffman v. Olson & Co., P.C., 872 N.E.2d 145, 148 (Ind. Ct. App. 2007).

Finally, Englehardt asserts that the small claims court erred when it determined that Clark was an involuntary bailee of his personal property. Englehardt claims that Clark voluntarily assumed possession of his property and negligently abandoned it. Br. of Appellant at 8. Clark testified that Englehardt left miscellaneous items with her, and because she did not know what to do with the property, she placed them in the care of a third party. This evidence supports the court's conclusion that Clark "took reasonable steps to preserve the property on behalf of [Englehardt], and she has no duty to retrieve this property from the third party[.]" Appellant's App. p. 5.

Conclusion

The judgment of the small claims court is supported by the evidence and is therefore not clearly erroneous.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.